IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 16207 of 2004

Between:

A. Nagaratnam, S/o A. Anandam, Bannuru Village,
Jupadu Banglow Mandal, Kurnool District.

..... PETITIONER

AND

1 The District Collector, Kurnool District, Kurnool.
2 The District Panchayat Officer, Kurnool District, Kurnool.
3 The Divisional Panchayat Officer, Kurnool Division,
Kurnool District.
4 The Assistant Engineer, Panchayat Raj Department,
Jupadu Banglow Mandal, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction or particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in issuing the impugned orders in Rc.No.1457/PR A1/2004 dt.19-8-2004 withdrawing the cheque power to the petitioner without any jurisdiction and authority of law, as illegal, arbitrary, and violation of Artricle 14, 19 , 21 of constitution of India and consequently set aside the above stated impugned proceedings of the 1st respondent.

Counsel for the Petitioner: MR.K.RATHANGA PANI REDDY

Counsel for Respondents: GP FOR PANCHAYAT RAJ & RURAL
DEVELOPMENT.

The Court at the admission stage made the following :

ORDER:

The petitioner, who was elected as Sarpanch of Bannuru Village, Jupadu Banglow Mandal, Kurnool District, was issued show cause notice dated 19-8-2004 in the light of the report submitted by the Divisional Panchayat Officer alleging that petitioner has misappropriated 89.21 quintals of rice meant for food for work programme not distributing the same to the labour. Hence the petitioner was called upon to show cause why action should not be taken against him to remove from the service under Section 249(1) of the A.P. Panchayat Raj Act, 1994, (for short 'the Act') and the cheque drawing powers of the petitioner were also withdrawn temporarily to prevent the misappropriation of funds, pending the enquiry. Questioning the same, present writ petition is filed.

Learned counsel for the petitioner submits that show cause notice under Section 268 of the Act was issued which is only rule making power. Under Rule 42 (1) of the A.P. Panchayat Raj Rules issued under G.O.Ms.No.30 (PR, RD & R) dated 20-1-1995, known as Rules relating to service taxes and lodging of

money's received by the Gram Panchayats and payment of moneys from the Gram Panchayat Fund, the Divisional Panchayat Officer can only withdraw the cheque drawing power against which an appeal lies to the District Collector concerned. Since the District Collector is being the appellate authority, the petitioner is deprived of the right of appeal against the order passed suspending the cheque drawing powers. In view of the same, the show cause notice is liable to be set aside.

Rule 42 (1) reads as under:

> Rule 42(1):- The district Panchayat Officer concerned may, for sufficient reasons to be recorded in writing, prohibit by an order any executive authority from drawing the moneys of the Gram Panchayt for such period as may be specified in such order.
>
> Provided that no such order shall be passed unless opportunity of making representation has been given to executive authority concerned.
>
> Provided further that the District Panchayat Officer may issue an interim direction to the executive authority not to draw the moneys of the Gram Panchayat pending the exercise of this power under this sub-rule.

A reading of the second proviso to Rule 42 of the A.P. Panchayat Raj Rules envisages passing of interim direction to the executive authority not to draw money of the Gram Panchayat, pending the exercise of this power under the sub-rule (1). Since cheque drawing powers are possessed by the executive authority, and the said powers were delegated to the Sarpanch, show cause notice as such was issued under Section 249 for withdrawing the cheque drawing powers by way of interim measure pending enquiry into the charges, by the Collector, cannot be said to be without jurisdiction. If the punishment is imposed under Rule 42(1) by the District Panchayat Officer, then only an appeal lies to the Collector. Since petitioner was called upon to show cause why action

should not be initiated for his removal under Section 249(1), Collector can pass any interim order, pending the passing of final orders. The petitioner cannot complain violation of principles of natural justice or deprivation of the right of appeal.

Accordingly, the Writ Petition is dismissed at the admission stage.

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A. Gopal Reddy, J.

10th September, 2004.
Js.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To
1 The District Collector, Kurnool District, Kurnool.
2 The District Panchayat Officer, Kurnool District, Kurnool.
3 The Divisional Panchayat Officer, Kurnool Division, Kurnool District.
4 The Assistant Engineer, Panchayat Raj Department, Jupadu Banglow Mandal, Kurnool District.
5 2 CCs to G.P. for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad.
6 2 CD copies.